

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 2:16-CR-20028

DANNY PAUL CUMMINGS

DEFENDANT

OPINION AND ORDER

Defendant Danny Paul Cummings filed a pro se motion (Doc. 31) to modify his sentence under the First Step Act amendments to 18 U.S.C. § 3582(c). The Government filed a response (Doc. 33) in opposition. In addition to the motion, the Court has reviewed other documents in the record, including the presentence investigation report (Doc. 23). The motion will be DENIED.

The Court may modify a term of imprisonment on motion by a defendant if: (1) the defendant has exhausted Bureau of Prisons administrative remedies or that process has stalled for 30 days; (2) extraordinary and compelling reasons consistent with Sentencing Commission policy statements warrant the modification; and (3) a consideration of 18 U.S.C. § 3553(a) factors supports modification. 18 U.S.C. § 3582(c)(1)(i). Here, the Government concedes that more than 30 days have passed after Defendant requested the warden file a motion on his behalf. (Doc. 33, pp. 6–7).

Defendant pled guilty on November 16, 2016 to one count of distribution of child pornography in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). (Doc. 16). The United States Sentencing Guidelines recommended a term of imprisonment of 210 to 240 months. On April 12, 2017, the Court varied downward and sentenced Defendant to 90 months imprisonment, ten years of supervised release, and a special assessment of \$100. In fashioning this sentence, the Court considered Defendant’s mental health diagnoses and his low criminal history category. Defendant

began serving his sentence on April 12, 2017, and thus far has served over 98% of his sentence. Defendant's current projected release date is January 2, 2023, and Defendant requests modification of his sentence to permit release one month early.

Defendant's motion will be denied because the § 3553(a) factors do not support modification of Defendant's sentence. As to the nature and circumstances of the offense, Defendant was held responsible for over 10,000 images, including images of prepubescent minors. The number and nature of those images highlights the seriousness of the offense. Additionally, the Court notes that Defendant was already granted a downward variance of 120 months. Further reducing Defendant's sentence would not promote respect for the law, serve as an adequate deterrent to criminal conduct, nor advance the need to avoid unwarranted sentence disparities.

IT IS THEREFORE ORDERED that Defendant's motion (Doc. 31) is DENIED.

IT IS SO ORDERED this 19th day of December, 2022.

/s/ P. K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE